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the question whether the contract in suit was or was not *ultra vires* and could be adopted.⁵

Second, where a contract was made between two parties and one party subsequently incorporated, but the unincorporated party to the contract continued to carry out his agreement to the satisfaction of the other, the contract will be enforced. This, like the above, is almost an adoption of the contract by the corporation, with the acquiescence of the other party.⁶

Third, where a partnership incorporates under the same name and continues to do the same business, *it would seem* that the corporation would be liable for the debts,⁷ etc., of the partnership, unless by the incorporation third parties were admitted and there was no fraud.⁸

Fourth, where the corporation takes property from the incorporators with knowledge of an existing equity, or under such circumstances that knowledge must be imputed to it, the corporation is bound by that equity, and can not claim to be a *bona fide* holder for value.⁹

Fifth, an attempt on the part of individuals to enforce as a corporation a right which, as individuals, they would be estopped to enforce, will not be permitted.¹⁰

In considering the above question, there have been excluded all those cases dealing with the liability of a corporation to its promoters for services or for expenditures necessary for incorporation, as well as those cases on the fiduciary relationship that the promoters are sometimes said to bear to the corporation. These are wholly separate and distinct topics not coming within the purview of this note.

B. C.

CONFESSIONS OBTAINED BY DURESS OR ARTIFICE.—The rules of evidence regarding the admissibility of confessions which are obtained by duress or artifice are well settled. Those statements forced from an unwilling accused are inadmissible,¹ while those which he is induced by trickery to make are admitted.² It is only in the application of these rules that any serious questions have arisen.

⁵ Kirkup v. Anaconda Amusement Co. (Mont.), 197 Pac. 1005 (1921).

⁶ Bane v. Dow, 80 Wash. 631, 142 Pac. 23 (1914).

⁷ Du Vivier and Co. v. Gallice, 149 Fed. 118 (1906).

⁸ Culberson v. Alabama Construction Co., 127 Ga. 599, 56 S. E. 765, 9 L. R. A. (N. S.) 507, 9 Ann. Cas. 507 (1907).

⁹ Carter v. Gray, 79 Ark. 273, 96 S. W. 377 (1906); Burnett Coal Mining Co. v. Schrepferman, *supra*.

¹⁰ Philadelphia Creamery Supply Co. v. Davis and Rankin Co., 77 Fed. 879 (1896); Burnett Coal Mining Co. v. Schrepferman, *supra*.

¹ Ammons v. State, 80 Miss. 592, 32 So. 9 (1902); 1 GREENLEAF, EVIDENCE, (13th ed.), § 219; 1 WIGMORE, EVIDENCE, § 821, *et seq.*

² People v. Utter (Mich.), 185 N. W. 830 (1921); 1 WIGMORE, EVIDENCE, § 841.

First, as to confessions obtained by duress:

Legal historians divide the law on this subject into four periods.³ In the first, which extends to about 1750, there were no restrictions whatever placed upon the use of the admissions of one charged with crime. In fact until the year 1640 torture was used to extract confessions.⁴ To what extent the rack was actually applied is not known, but all statements made under its excruciating pain, when the accused would gladly confess anything to obtain momentary relief from his torment, were freely admitted by the courts. The second stage, from about 1750 to about 1800, marked a change for the better. For the first time judges began to question the admission of certain confessions. In this period the doctrine was first advanced that duress, if of a sufficient character, might render a confession inadmissible. Finally in the third period, which lasted nearly throughout the whole of the nineteenth century, the principle of exclusion was developed to an abnormal degree. If there was any doubt as to the voluntary character of a confession it was rejected. In one case a confession was excluded because the accused was promised a glass of gin; in others because the prosecutor said, "If the prisoner would only give him his money he might go to the devil if he pleased"; because a handbill offering a reward for evidence was posted in the magistrate's office; and because the prisoner was told that "what he said would be used *against* him".⁵ This principle of exclusion was carried so far during this period that in one case the argument was seriously advanced by able counsel that the law assumed that a man might falsely accuse himself upon the slightest inducement.⁶ And now, in the fourth period a reaction seems to have set in. The judges, while they try to assure criminals every protection of the law, still admit confessions unless they are shown to have been obtained under sufficient duress to overcome the mind of the accused.⁷

In this country, practically the only cases of confessions induced by actual torture that have come before the courts are those of slaves who were whipped, or threatened with the whip to make them confess. They were practically all excluded.⁸ In one case a slave was merely tied. It was shown to be the custom of the master so to tie his slaves before whipping them, and the confession was excluded.⁹ In another case a master tied his slave to a log and was about to whip him. He told him that if he confessed

³ See 1 WIGMORE, EVIDENCE, § 817, *et seq.*; "The Judicial Use of Torture," 11 HARVARD LAW REVIEW 220, from which the historical matter given above is largely drawn.

⁴ See 11 HARVARD LAW REVIEW 295.

⁵ See 1 WIGMORE, EVIDENCE, § 820.

⁶ Mr. Mills, *arguendo*, in *R. v. Baldy*, 2 Den. Cr. C. 436, 445 (1852). See 1 WIGMORE, EVIDENCE, § 863.

⁷ *Frank v. State*, 39 Miss. 705 (1861). See 1 GREENLEAF, EVIDENCE, (13th ed.), § 219.

⁸ *State v. Clarissa*, 11 Ala. 57 (1847); *Hector v. State*, 2 Mo. 167 (1829); *Van Buren v. State*, 24 Miss. 512 (1852).

⁹ *Spence v. State*, 17 Ala. 192 (1850).

his punishment would be lighter. Here also the confession so obtained was excluded.¹⁰ But in another case the confession of a slave was admitted which was made after he had seen another slave severely whipped.¹¹

Confessions made in fear of a mob are usually excluded.¹² In one case a confession was excluded because private captors placed a rope about the neck of the accused.¹³ In another a mob brutally hung the accused until he was nearly dead. They then cut him down and he confessed. It was, of course, excluded.¹⁴ In one case the accused was pursued by three armed men. When they captured him they used no violence but merely accused him of the crime and arrested him for it. He confessed, and the court excluded the confession.¹⁵ The courts, it is submitted, seem to have gone rather too far in many cases where confessions were excluded because they were made under the fear of mob violence.¹⁶

The famous "sweat-box" of the police, whenever it involves direct physical intimidation by starvation or confinement in dark cells, is considered sufficient duress to invalidate a confession.¹⁷ In one case the accused was confined in a room six feet by eight. All light and air was excluded. Even the cracks were covered with blankets. All of this in the middle of summer. The court in a biting sarcastic opinion excluded a confession made after a long period of such confinement.¹⁸ But the term "sweat-box" is often loosely used. The courts will not exclude a confession merely because it was made after solitary confinement, as long as the prisoner received reasonable treatment.¹⁹

If a confession is not admissible, it is the duty of the trial judge to exclude it from the evidence.²⁰ The accused has a right, in many jurisdictions, to demand that the circumstances of the confession be examined by the judge before it is placed before the jury at all, so that if it is excluded the jury may not be prejudiced thereby. But if the judge admits the confession, the jury may not question its validity.²¹ They may consider the circumstances under which it was made and may give it more or less weight accordingly; but they have to receive it.²²

When we come to consider the law on confessions obtained by artifice, we find a practically unbroken string of cases holding that

¹⁰ *Joe v. State*, 38 Ala. 422 (1863).

¹¹ *Frank v. State*, 39 Miss. 705 (1861).

¹² *Young v. State*, 68 Ala. 569 (1881); *Taylor v. Com.* (Ky.), 42 S. W. 1125 (1897); *Thompson v. Com.*, 20 Gratt. (Va.) 724 (1870).

¹³ *State v. Young*, 52 La. Ann. 478, 27 So. 50 (1899).

¹⁴ *Miller v. People*, 39 Ill. 457 (1866).

¹⁵ *State v. Dildy*, 72 N. C. 325 (1875).

¹⁶ See *State v. Dildy*, *supra*; *State v. Drake*, 82 N. C. 592 (1880).

¹⁷ *Ammons v. State*, 80 Miss. 592, 32 So. 9 (1902); *State v. McCullum*, 18 Wash. 394, 51 Pac. 1044 (1897).

¹⁸ *Ammons v. State*, *supra*.

¹⁹ See 1 WIGMORE, EVIDENCE, § 833.

²⁰ *Williams v. State*, 72 Miss. 117, 16 So. 296 (1894).

²¹ *Williams v. State*, *supra*.

²² *Williams v. State*, *supra*.

such confessions are to be freely admitted as evidence against those accused of crime.²³ The few cases which may appear to hold otherwise are nearly all cases in which other rules of evidence, notably that of privileged communications, were invoked to exclude the admissions of the accused. The courts base their decisions upon the fact that most confessions which a prisoner is tricked into making are true. They say that there is no reason for excluding a confession unless it is made under circumstances tending to produce a false statement from one accused of crime. When deception is employed, it may produce a statement which the accused would not be willing to make public, but it will practically never induce the criminal falsely to accuse himself of guilt.²⁴

It is submitted that while this is excellent logic and a sound application of the rules of evidence, yet it is a policy which is shocking to our natural sense of justice. The courts which admit evidence of this character all condemn the means by which it is obtained. They admit that it is contrary to the spirit of modern law to trick an accused into a confession. And yet they allow that confession to convict him. As long as the courts admit such evidence, the practice will prevail. The victims of the crime, from a natural sense of revenge, and the police from a misplaced professional pride both want a conviction. They know that if they can trick whomever they suspect into making a confession that he will be convicted on its strength. Hence they stop at no deceit to obtain an admission of his guilt, and the courts then freely allow such admissions to be used against him. This is the law; it may be justice; but it certainly is not fair play. The courts may condemn and reprimand, but it will avail nothing. All that can change the matter is an open position to exclude confessions obtained by artifice. Let us hope that as our law grows the courts will take this position and refuse to admit such evidence in all criminal matters. Some courts have already hinted at this. There have been a few dissenting opinions which protested against the admissions of such confessions²⁵ and some courts have stated it as a rule, by way of *dicta*.²⁶ While these *dicta* and the occasional dissents of judges are not authority, they at least show that the courts are beginning to realize that such confessions really should be excluded. Let us hope that some day our courts will take this view of the subject and exclude confessions obtained by artifice as they now exclude privileged communications.²⁷

W. C. H.

²³ *People v. Dunnigan*, 163 Mich. 349, 128 N. W. 180 (1910); *Burton v. State*, 107 Ala. 108, 18 So. 284 (1895); *Com. v. Goodwin*, 186 Pa. St. 218, 40 Atl. 412 (1898).

²⁴ *Com. v. Cressinger*, 193 Pa. St. 326, 44 Atl. 433 (1899).

²⁵ See dissenting opinion in *People v. Barker*, 60 Mich. 277, 27 N. W. 539, 549 (1886).

²⁶ See *People v. McCullough*, 81 Mich. 25, 45 N. W. 515 (1890).

²⁷ An old Virginia case on the subject of the admissibility of confessions is *Thompson v. Com.*, 20 Gratt. 724.